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7 CFR Ch. VII (1-1-01 Edition)

(b) Qualifying loss determinations shall be made on an individual stand basis. A qualifying loss shall be the loss for the individual stand of eligible trees, or eligible vines, as appropriate, after deducting the normal mortality of such trees or vines, equal to or in excess of 20 percent mortality.

(c) Qualifying losses of eligible trees or vines shall not include:

(1) Losses which could have been prevented through readily-available horticultural measures; or

(2) Losses of trees or vines which would normally have been rehabilitated or replanted within the 12-month period following the loss, in the absence of the natural disaster.

(d) When visible evidence of losses no longer exists on the site where the eligible trees or eligible vines were planted, acceptable evidence as determined in accordance with instructions issued by the Deputy Administrator must be established for the county committee to qualify the individual stand for the program.

§ 783.7 Eligible costs.

(a) Payments will be made only to the extent specifically provided for in this part. An eligible owner shall be reimbursed under this part, to the extent of the availability of funds, for an amount not to exceed 100 percent of the eligible costs of replanting or rehabilitating trees or vines, not in excess of the number of trees or vines constituting the qualifying loss. Such reimbursement may be based on average costs or the actual costs for the replanting, or rehabilitating practices, as determined by the Deputy Administrator. If the costs are to replace eligible trees or eligible vines, the costs reimbursed under this part shall only be for replacement seedlings or cuttings of a size and quality determined by Deputy Administrator to be sufficient for that purpose. The costs for which cost-sharing shall be permitted shall only be the costs of:

(1) The seedlings or cuttings, eligible tree or vine rehabilitation measures;

(2) Site preparation measures and debris handling measures that are normal cultural practices for the type of individual stand being re-established and

necessary to ensure successful plant survival;

(3) Chemicals and nutrients if needed to ensure successful plant survival; and

(4) Labor used to physically plant or rehabilitate such seedlings or cuttings as based on standard labor rates as determined by the county committee.

(b) Costs eligible for reimbursement under this part specifically exclude items such as fencing, irrigation, irrigation equipment, measures to protect seedlings from wildlife, and general land and eligible tree or vine stand improvements, and re-establishing structures and windscreens.

(c) When eligible trees or eligible vines are replanted instead of rehabilitated, the types planted may be different than those originally planted if the new types have the same general end use as determined by the county committee. Payments will be based on the lesser of rates established to plant the types actually lost or the cost to establish the trees or vines actually used. Eligible costs shall not include costs incurred for planting species of seedlings or cuttings differing significantly from the species of the seedlings or cuttings constituting the qualifying loss except as approved by the Deputy Administrator. If such substitution is approved, eligible costs shall be the lesser of:

(1) The actual eligible costs incurred; or

(2) The estimated eligible costs which otherwise would have been incurred to replant the species constituting the qualifying loss.

(d) Costs eligible for reimbursement under this part shall only include expenditures approved within the limits set by this part, including, but not limited to, those limits set forth in paragraph (a) of this section. Eligible costs include costs incurred before an application for payment is submitted. Eligible costs shall only include those costs for which the eligible owner has submitted documentation determined by the county committee to adequately document such costs. The county committee shall limit TAP payments for eligible costs at the minimum level to re-establish an individual stand, as determined by the State committee.

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(e) Payments shall not exceed the lesser of 100 percent of the eligible costs actually incurred by an eligible applicant for replanting or rehabilitating the qualifying loss, or the average cost to replant or rehabilitate the qualifying loss, as determined by the Deputy Administrator.

§ 783.8 Application process.

(a) Applications for payment shall be filed by the eligible owner with the local county office and shall contain an estimate by the applicant of the number of eligible trees or eligible vines which constitute the qualifying loss and the amount of the acreage of the individual stands with respect to which the loss was suffered. The applicant must provide sufficient evidence of the losses so as to allow the county committee to determine qualifying losses.

(b)(1) The county committee or a designee may conduct field reviews to determine the actual qualifying loss and the acreage of individual stands with respect to which the loss was suffered. The county committee and, if designated by the county committee, the county executive director, are authorized, subject to the provisions of this part, to approve or disapprove all applications, subject to the limitations and conditions of this part, provided the applicant is not a county committee member or an FSA employee.

(2) The State committee shall approve or disapprove applications of the county committee members and all FSA employees except applications submitted by the State Executive Director, or by a State committee member.

(3) The Deputy Administrator, or a designee, shall approve or disapprove applications of State committee members and the State Executive Director.

(4) All applications forwarded to a higher reviewing authority for consideration shall be accompanied by committee recommendations. No application shall be approved unless the owner meets all eligibility requirements. Information furnished by the applicant and any other information, including knowledge of the county and State committee members concerning the owner's normal operations, shall be taken into consideration in making

recommendations and approvals. If information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operations in order to make a determination as to the owner's eligibility, the owner's application shall not be approved until sufficient additional information is provided by the owner.

(c) If an owner is eligible to receive payments under this part and the catastrophic risk protection crop insurance program (7 CFR part 402), or the non-insured crop disaster assistance program (7 CFR part 1437) for the same tree or vine loss, the eligible owner must choose whether to receive the other program benefits or payments under this part. The eligible owner cannot receive both. However, if the other program benefits are not available until after the eligible owner has received benefits under this part, the eligible owner may obtain the other program benefits if the eligible owner refunds the total amount of the payment received prior to receiving the other program benefits. If the eligible owner purchased additional coverage insurance, as defined in 7 CFR 400.651, or is eligible for emergency loans, the eligible owner will be eligible for assistance under such program, and this part as long as the amount received for the loss under the additional coverage or the emergency loan together with the amount received from the other programs does not exceed the amount of the actual loss of the eligible owner.

[62 FR 50850, Sept. 29, 1997, as amended at 63 FR 3791, Jan. 27, 1998]

§ 783.9 Obligations of an eligible owner.

(a) Eligible owners must submit a request for assistance on the approved form and must also submit all documentation requested by the appropriate official as necessary to make determinations specified in this part.

(b) Eligible owners must:

- (1) Comply with all terms and conditions of this part;
- (2) Execute all required documents;
- (3) Comply with all applicable noxious weed laws; and